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FOURTH UNITED NATIONS CONFERENCE TO REVIEW
ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED
EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL
OF RESTRICTIVE BUSINESS PRACTICES
Geneva, 25-29 September 2000
Item 6 (b) of the provisional agenda

KIEV DECLARATION

The Regional Conference on Competition Policy for Commonwealth of Independent States Countries and Countries of Central and Eastern Europe, Kiev (Ukraine), 13-14 July 2000, held within the framework of the preparatory process for the Fourth Review Conference, pursuant to paragraph 6 of the agreed conclusions of the Intergovernmental Group of Experts on Competition Law and Policy at its second session[1], adopted the Kiev Declaration annexed hereto for submission to the Fourth Review Conference.

[1] Report of the Intergovernmental Group of Experts on Competition Law and Policy on its second session (TD/B/COM.2/19 - TD/B/COM.2/CLP/14).

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KIEV DECLARATION

Regional Conference on Competition Policy for Countries members of the Commonwealth of Independent States and Countries of Central and Eastern Europe (Kiev, Ukraine, 13-14 July 2000)

Participants in the Conference from countries members of the Commonwealth of Independent States and countries of Central and Eastern Europe emphasize the significant role played by competition law and policy in the development of market economies of these countries. The implementation of State antimonopoly policy directed towards the restriction of monopolism and the development of competition facilitates the creation of a favourable entrepreneurial climate, the inflow of foreign investments and the free movement of goods, capital and services.

At the same time, taking into account the effects of the liberalization and globalization of international economic relations and the necessity of establishing a more effective and equitable global economic order, participants in the Conference underline the importance of establishing and developing effective international instruments which would make it possible to combine the most efficient possible allocation of resources with equitable opportunities, in particular for transition countries, to participate in the functioning of the market.

In this connection, participants in the Conference fully support the view expressed in the UNCTAD Bangkok Declaration of February 2000 that "in addition to national efforts, the international community as a whole has the responsibility to ensure an enabling global environment through enhanced cooperation in the field of trade, investment, competition and finance ..." (document TD/387, para. 4, 18 February 2000).

In the opinion of participants in the Conference, the relevant international instruments should include, on the one hand, mechanisms of cooperation between different countries in the development and improvement of national laws and, on the other hand, international norms to be applied in the sphere of competition. Mechanisms of that sort should also facilitate the effective implementation of competition law and policy.

Participants in the Conference stress that it is important that competition should be defended both by government officials and bodies and by market participants, including economic entities and consumers represented by their public organizations. In this connection, participants in the Conference draw special attention to the necessity of a dialogue with civil society about matters of competition policy; it is considered the prime requisite for educating the public in this field and ensuring its support for competition policy.

In view of the foregoing, participants in the Conference appeal to the Fourth United Nations Conference to Review Restrictive Business Practices to pay special attention to the following matters:

1. Taking into account the process of integration of countries members of the Commonwealth of Independent States and countries of Central and Eastern Europe into the international economic system, which provides for, in particular, the improvement of antimonopoly regulation in these countries in accordance with international principles and norms, the high esteem for UNCTAD's action to develop international cooperation in this sphere and UNCTAD's universal status, it would be expedient to strengthen further this organization's role in international cooperation in the sphere of competition.

2. The integration of countries of the region into the world economy requires the improvement of economic regulation in these countries in accordance with international principles and norms and the more active application of the experience of countries with a long-standing tradition of antimonopoly regulation. In this connection, it would be desirable to expand technical assistance by UNCTAD, an organization with wide experience in the area of international cooperation in competition policy, to the States of this region. The basis for this respect should be the statement in paragraph 140 of the Bangkok Plan of Action to the effect that UNCTAD should continue to provide and expand its technical assistance to interested countries regarding elaboration of national laws and institutional capacity-building. The expansion of UNCTAD's contribution to the development of regional cooperation between the countries of the region in the sphere of competition could be effected through, in particular, participation in the preparation of amendments to legislative acts. UNCTAD could also facilitate the harmonization of competition rules in the region through the elaboration of model laws and guidelines. The technical assistance could also be provided in the form of training seminars and conferences for specialists of competition authorities.

3. Participants in the Conference also underline the expediency of expanding further UNCTAD's research role in the sphere of competition. With the interests of the countries of the region in mind, effect should be given to paragraphs 142 and 143 of the Bangkok Plan of Action, which respectively provide: that "UNCTAD should continue to examine issues related to competition law and policy of particular relevance to development", that it would be expedient to "prepare periodical reports on restraints in strategic sectors and their impact on developing countries and countries with economies in transition, particularly on their competitiveness" and that UNCTAD should study in depth the impact on competition of possible international agreements (paragraph 142) and that UNCTAD should "study, clarify and monitor, including through specific country and case studies, the relationship between competition and competitiveness as well as trade-related aspects of competition" (paragraph 143).

UNCTAD could prepare studies on the problem of exercising antimonopoly control over economic concentration in countries of Central and Eastern Europe and countries members of the Commonwealth of Independent States and studies of the interaction between foreign-trade policy and competition policy. Special attention could be paid to the consequences of antidumping measures for competition on the internal market.

4. UNCTAD's role in education processes and in the clarification of positive effects of competition should also be expanded. In particular, it would be expedient if UNCTAD assisted the countries of the region in educating the public at large and representatives of the private sector about competition law and policy, in involving the private sector and consumer

organizations in the educational process, in introducing into universities and professional institutions courses on the economic and legal grounds for competition and consumer policies and in preparing and sponsoring publications.

5. UNCTAD should look very carefully into the possibility of making preliminary steps towards the elaboration and implementation of international competition rules on the basis of the good will of the countries that are legally and organizationally readiest to introduce such rules, concentrating its attention, in particular, on the following:

Initiating the preparation of an international agreement on competition whose provisions would extend to anticompetitive actions both of governments and of economic entities;

Embodying in such an agreement basic principles for the following:

1. National treatment in competition law and practices;

2. Most-favoured-nation treatment in competition law and practices;

3. Transparency of national law and policy;

Establishing in such an agreement basic mechanisms for the following:

1. Cooperation between competition authorities:

2. Prohibition of the most dangerous cartels; mutual recognition of decisions on cartels, with a view to simplifying the procedure for implementing decisions which concern foreign economic entities; introduction of a procedure for notifying national competition authorities about export cartels;

3. Adoption of international framework rules for antimonopoly control over economic concentration;

4. Creation of specific (special) conditions for transition and developing countries;

5. Rendering of technical assistance to the said countries;

6. Establishment of dispute settlement procedures for the purpose of ensuring observance of the principles laid down.

UNCTAD should study carefully the remarks which substantiate the prematurity of, and the barriers to the introduction of international competition rules, and should, when rules are elaborated, take those remarks into account in the form of restrictions on the rules' sphere of application or the number of participants or in any other form.